

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT DAMON EPPS, P53887,
Plaintiff,

v.

SALINAS VALLEY DEPARTMENT OF
STATE HOSPITAL, et al.,
Defendant(s).

Case No. [17-cv-07048-CRB](#) (PR)

ORDER OF DISMISSAL

(ECF No. 8)

Plaintiff, a prisoner at Salinas Valley State Prison (SVSP), has filed a pro se complaint for damages under 42 U.S.C. § 1983 alleging “swelling, pain and itching” after he received a “Haloperidol Deconate injection 300 mg to right buttock.” Compl. (ECF No. 1) at 3. According to plaintiff, he has taken this injection for years without problem, but Dr. Strieble improperly changed the dosage from 250 mg to 300 mg and had him take the shot on “7-14-17 instead of waiting” until “7-20-17.” Id. Plaintiff also seeks appointment of counsel under 28 U.S.C. § 1915.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” Id. § 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

B. Legal Claims

Deliberate indifference to serious medical needs violates the Eighth Amendment's proscription against cruel and unusual punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). A "serious medical need" exists if the failure to treat a prisoner's condition could result in further significant injury or the "unnecessary and wanton infliction of pain." McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992) (citing Estelle, 429 U.S. at 104), overruled in part on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A prison official is "deliberately indifferent" only if he knows that a prisoner faces a substantial risk of serious harm and disregards that risk by failing to take reasonable steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

Neither negligence nor gross negligence warrant liability under the Eighth Amendment. Id. at 835-36 & n.4. An "official's failure to alleviate a significant risk that he should have perceived but did not . . . cannot under our cases be condemned as the infliction of punishment." Id. at 838. Instead, "the official's conduct must have been 'wanton,' which turns not upon its effect on the prisoner, but rather, upon the constraints facing the official." Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998) (citing Wilson v. Seiter, 501 U.S. 294, 302-03 (1991)). Prison officials violate their constitutional obligation only by "intentionally denying or delaying access to medical care." Estelle, 429 U.S. at 104-05.

Plaintiff's allegations that he suffered swelling, pain and itching after Dr. Strieble changed plaintiff's Haloperidol Deconate injection dosage from 250 mg to 300 mg, and had the injection administered to plaintiff several days too early, may be enough for plaintiff to pursue a negligence or medical malpractice claim against Dr. Strieble in state court, but they are not enough to state a deliberate indifference to serious medical needs claim under § 1983 against Dr. Strieble in federal court. See Farmer, 511 U.S. at 835-36 & n.4; see also Toguchi v. Chung, 391 F.3d 1051, 1060-61

(9th Cir. 2004) (a claim of negligence or medical malpractice insufficient to make out 8th Amendment violation). There is no indication whatsoever that Dr. Strieble's alleged shortcomings were wanton so as to implicate the Eighth Amendment. Cf. Wilson, 501 U.S. at 302-03.

CONCLUSION

For the foregoing reasons, the complaint is DISMISSED under 28 U.S.C. § 1915A(b) for failure to

1 state a claim upon which relief may be granted, and plaintiff's motion for appointment of counsel
2 (ECF No. 8) is DENIED as moot.

3 **IT IS SO ORDERED.**

4 Dated: March 12, 2018

5 
6 CHARLES R. BREYER
7 United States District Judge

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT DAMON EPPS,

Plaintiff,

v.

SALINAS VALLEY DEPARTMENT OF
STATE HOSPITAL, et al.,

Defendants.

Case No. 3:17-cv-07048-CRB

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 12, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert Damon Epps ID: P53887
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960-1050

Dated: March 12, 2018

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable CHARLES R. BREYER